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EXAMINER

GARCIA, ERNESTO

ART UNIT

PAPER NUMBER

3679

DATE MAILED: 08/11/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/806,304

Applicant(s)

BROCHEZ, ALAIN

Examiner

Ernesto Garcia

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 07 June 2005 and 27 January 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 33,34,36,39,49,50,53-57 and 59-65 is/are pending in the application.
- 4a) Of the above claim(s) 49 and 50 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 33,34,36,39,53-57 and 59-65 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 29 March 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

The indicated allowability of claim 33 is withdrawn in view of reconsideration of Ekstein, 3,797,194, and the scope of the claim. Rejections based on the cited reference(s) follow.

### ***Election of Species***

Applicant's election with traverse of claims 33, 34, 36, 39, 50, 53-57, and 59-65 (Species I, Figures 1-7) in the reply filed on June 7, 2005 is acknowledged. The traversal is on the ground(s) that examination of all pending claims places no burden on the current examiner because the pending claims each recite subject matter which was either allowed or was considered as being allowable by the previous examiner and that the current examiner has not been given full fail and credit to the examination of the pending claims by the previous examiner.

This is not found persuasive because applicant has failed to show that the claims that were allowed or were considered allowable by the examiner is a reason for not requiring a restriction requirement. Furthermore, applicant has failed to show that "search" is the only criteria that goes into determining the existence of a "serious burden". Accordingly, to have to examine two or more patentably distinct species of

different scope in the same application, including consideration of individual arguments for each species would impart a serious burden upon the examiner.

In response to the argument that “full faith and credit... to ... a previous examiner has not been given”, applicant should note that “full faith and credit ... to ... a previous examiner” is not a requirement for an election of species and a further requirement to provisionally elect one. Further, MPEP 706.04 refers to continued examination of the same invention as applied to rejected claims previously allowed.

The requirement is still deemed proper and is therefore made FINAL.

Claims 49 and 50 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on June 7, 2005. Regarding the withdrawal of claim 50, since claim 50 depends from claim 49, which is not readable on the elected species, claim 50 inherently becomes non-readable.

### ***Drawings***

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character “1” has been used to designate both a corner joint with a

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first configuration (Figs. 1, 3, and 7), a corner joint with a second configuration (Fig. 8), a corner joint with a third configuration (Fig. 9).

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character "9, 10" has been used to designate both attachment channels with a first configuration (Figures 1, 3, and 7), attachment channels with a second configuration (Figure 8) and attachment channels with a third configuration.

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character "42" has been used to designate both a free space with one configuration (Figs. 3), a free space with a second configuration (Fig. 8), and a free space with a third configuration (Fig. 9).

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the filling compound provided at a location near or at the lip projection such that a) the filling compound is either provided under the lip projection, b) the filling compound is provided in passages around the lip projection, c) the filling compound is provided on the lip projection (claim 34), and "wedges in register with a center portion of the second leg" (claims 54 and 55, lines 15-16) must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended". If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the examiner does not accept the changes, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Specification***

The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: "lip projection" recited in claim 22, in line 8, and "press-in parts" recited in claim 33, line 8-9, "the insert parts include at least one locking element"

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recited in claim 33, line 26, "one side" recited in claim 33, line 16, and "another side" recited in claim 33, line 17, lack proper antecedent basis in the specification.

### ***Claim Objections***

Claims 33 and 34 are objected to because of the following informalities:

regarding claim 33, --each-- should be inserted after "parts" in line 8, "pieces" in line 11 should be --parts--, --each-- should be inserted after "include" in line 11, "part" in line 25 should be --parts--, "part" in line 35 should be --piece--, "the insert piece has" in line 37 should be --the insert parts have--, and the limitation "the accompanying side member" in line 48 lacks proper antecedent basis;

regarding claim 34, the second occurrence of "the" in line 5 should be deleted;  
and,

regarding claim 49, "an attachment channel" in line 21 should be --the attachment channels" recited in line 2. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 33, 34, 36, 39, 53-57, and 59-65 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The claims are generally narrative and indefinite, failing to conform with current U.S. practice. They appear to be a literal translation into English from a foreign document and are replete with grammatical and idiomatic errors.

Regarding claims 33, 35, 49, 53, 54, 56, and 59, the metes and bounds of the claim is unclear. The subject matter as indicated in the preamble recites that the invention is a corner joint. However, the body of the claim only recites a corner piece without reciting the attachment channels in order to be considered a joint. Applicant should note that a joint is considered to be a connecting member (the corner piece) joined to at least one member. Further, how do a corner piece and a locking means comprising upset material parts in the shape of a lip projection form a corner joint without positively reciting the attachment members?

Regarding claim 33, there is an inconsistency between the language in the preamble and a certain portion in the body of the claim, thereby making the scope of the claims unclear. The preamble clearly indicated that the corner joint is "for joining two frame side members". However, the body of the claim positively recites "the frame side members", e.g., "press-in parts of the frame members cooperate with notches defined



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on the corner piece" (lines 8-10), which indicates that the claims are being drawn to a combination of the "corner joint" and the "two frame side members". Accordingly, is the combination or subcombination being claimed? Appropriate correction, clarification, or both is required.

Further, if claim 33 is only claiming the subcombination, then the claim is improperly seeking to define elements based upon a comparison to unclaimed elements. Note lines 47-48 wherein the inclination of the stop surface is defined as being in relation to the longitudinal direction of the accompanying side member.

The limitation "the relationship" in line 16 is unclear what relationship exists between the one side and the another side. The limitation "notch" in line 11 makes unclear whether the notch is one of the notches recites in line 9 or another notch. The limitation "the side" makes unclear whether that is the "one side" in line 12, or the "another side" in line 13. The limitation "the surrounding parts" in line 38 makes unclear what parts surround the framed structure. The limitation "material that has been scraped off" recited in line 41 lacks reference to the component that the material is scraped off. Further, the limitation "and/or" in line 38 makes the locking element be thicker and equally thick than the surrounding parts, which the two sizes cannot exist simultaneously. Further, it is unclear how many characteristics are listed after line 30. Applicant should consider alphabetizing the characteristics. The examiner assumed there are seven characteristics.

Regarding claim 34, the limitation “the above-mentioned functions” does not exclude all those functions that are recited in claim 33.

Regarding claim 36, is the “attachment channel” recited in lines 8-9 one of the attachment channels intended to be used with the corner joint recited in line 2 or an attachment channel that is positively claimed? Further, is the “respective channel” recited in line 10 one of the channels intended to be used with the corner joint, or another channel?

Regarding claim 39, there is an inconsistency between the language in the preamble and a certain portion in the body of the claim, thereby making the scope of the claims unclear. The preamble of claim 36 clearly indicated that the corner joint is “for joining two frame side members having attachment channels”. However, the body of the claim positively recites “the attachment channels”, e.g., “the attachment channels include lip projections” (lines 1-2), which indicates that the claims are being drawn to a combination of the “corner joint” and the “attachment channels”. Accordingly, is the combination or subcombination being claimed? Appropriate correction, clarification, or both is required.

Regarding claim 49, the limitation “another insert part” in line 8 makes unclear whether that is one of the two insert parts recited in line 3 or an additional insert part.

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Further, the limitation "another end" in line 9 lacks a point of reference as in "another end" of what?

Regarding claim 54, there is an inconsistency between the language in the preamble and a certain portion in the body of the claim, thereby making the scope of the claims unclear. The preamble clearly indicated that the corner joint is "for joining two frame side members". However, the body of the claim positively recites "the frame side members", e.g., "a panel is retained by the frame members" (line 15), which indicates that the claims are being drawn to a combination of the "corner joint" and the "two frame side members". Accordingly, is the combination or subcombination being claimed? Appropriate correction, clarification, or both is required. Further, if the claim is only claiming the subcombination, then the claim is improperly seeking to define elements based upon a comparison to unclaimed elements. Note lines 8 and 9 wherein the apex is directed along a longitudinal axis of an attachment channel.

Regarding claims 54 and 55, the limitation "in register" in line 15 is unclear.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 33, as best understood, is rejected under 35 U.S.C. 102(b) as being anticipated by Ekstein, 3,797,194.

Regarding claim 33, Ekstein discloses, in Figure 2 and 3, a corner joint includes at least one corner piece **16** having two insert parts **74,75** joined at connecting ends **181** and positioned relative to one another at a predetermined angle. The corner piece **16** is provided with locking means **108** comprising lip projections **108**. The insert parts **74,75** each include at least one notch **A8** and a shape of a predominantly right-angle triangle **96**. The notch **A8** of each of the insert parts **74,75** comprises a triangular shape defined by one side **A9**, against which one of the lip projections **108** is positioned, is longer than another side **A10** over which a free end of the one of the lip projections **108** is pressed in. The lip projections **108** include a contact surface **112** disposed at one end thereof. The insert parts **74,75** includes at least one locking element **102** defining a contact surface configured geometrically. The locking element **102** has at least one characteristic, i.e., the at least one locking element **102** is only connected to the corner piece **16** at a base portion **178**.

Applicant is reminded that the method of forming the lip projections by means of slantingly press-in parts of the frame side members is not germane to the issue of

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patentability of the corner joint itself. Therefore, this limitation has been given limited patentable weight. See MPEP ' 2113.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 34 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ekstein, 3,797,194, as applied to claim 33 above, and further in view of Nederland patent, NL-7,213,375.

Regarding claim 34, Ekstein, as discussed above, fails to disclose a filling compound provided at a location near or at the lip projection such that the filling compound is either provided under the lip projection, provided in passages around the lip projection, or provided on the lip projection. Nederland patent '375 teaches in Figure 2 and 3 a filling compound 33,48 provided at a location near or at the lip projection such that the filling compound is either provided under the lip projection to fill cavities of frame structures. Therefore, as taught by the Netherlands patent, it would have been obvious to one of ordinary skill in the art at the time the invention was made to include

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filling compound provided under the lip projection to seal and fill cavities of frame structures.

***Allowable Subject Matter***

Claims 36, 39, 53-57, and 59-65 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter:

regarding claims 36, 54, 56, the prior art of record does not disclose or suggest a corner joint comprising a third leg extending obliquely relative to a first leg and a second leg in a direction generally proximal to the corner portion and connecting to the first leg;

regarding claims 39, 60, and 61, these claims depend from claim 36;

regarding claim 53, assuming *arguendo* that the attachment channels are part of the joint, the prior art of record does not disclose or suggest a corner joint comprising a corner piece having an apex directed along a longitudinal axis of an attachment channel;

regarding claims 57 and 62-65, these claims depend from claim 56; and,

regarding claim 59, assuming *arguendo* that the combination is claimed, the prior art of record does not disclose or suggest a corner joint comprising a side of notches

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over which a free end of a lip projection is pressed in has a concave bent or buckled shaped.

### ***Response to Arguments***

Applicant's arguments with respect to claims 33 and 34 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ernesto Garcia whose telephone number is 571-272-7083. The examiner can normally be reached from 9:30-5:30. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel P. Stodola can be reached at 571-272-7087.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only.

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For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

E.G.

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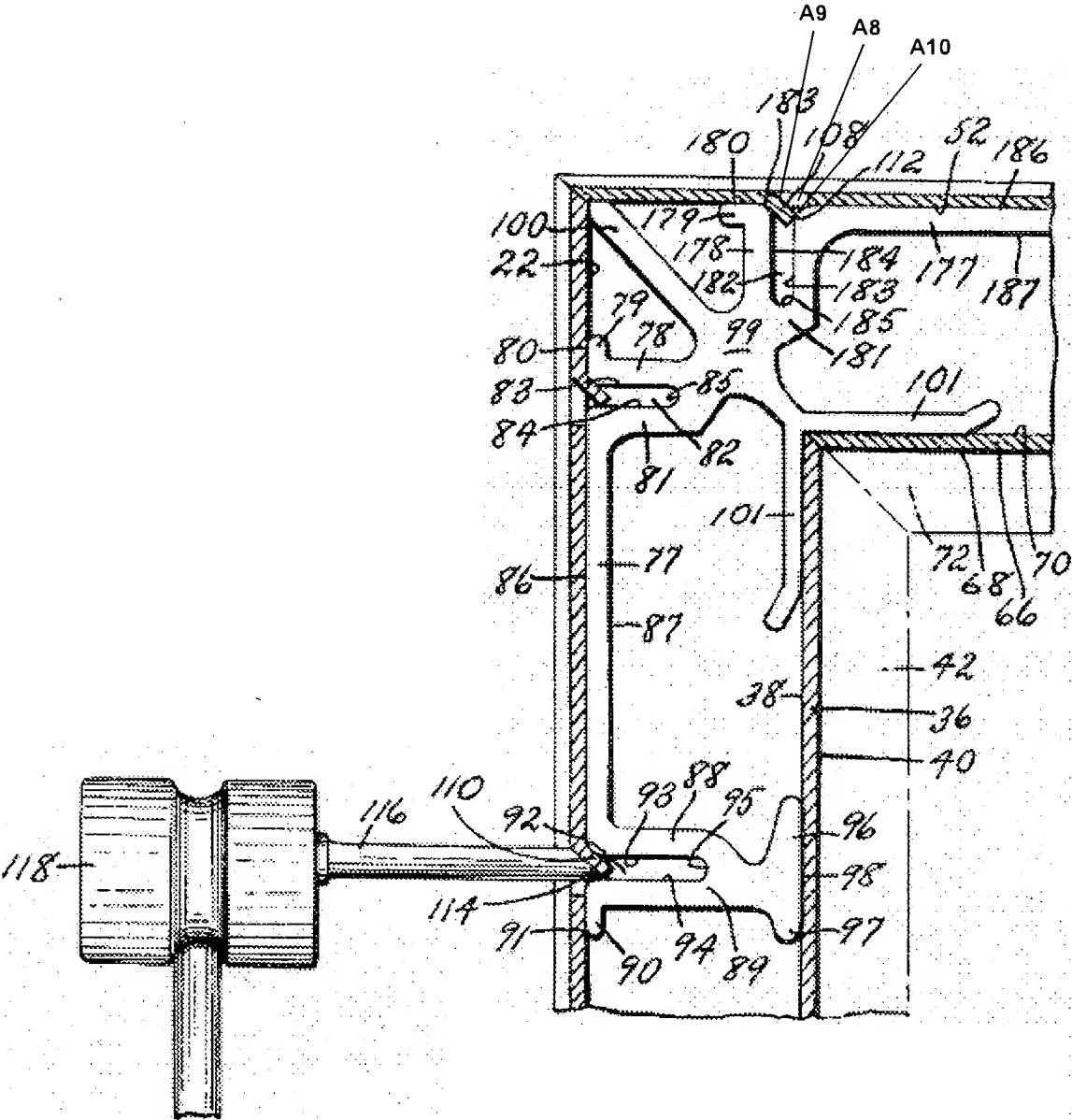
August 3, 2005

Attachment: one marked-up page of Ekstein, 3,797,194

  
DAVID E. BOCHNA  
PRIMARY EXAMINER



Ekstein, 3,797,194



*Fig.2*